
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ELRACHIO CRAIG,

Plaintiff,

v.

SGT. RICH *et al.*,

Defendants.

**MEMORANDUM DECISION
AND ORDER
GRANTING MOTION
FOR RELIEF FROM JUDGMENT**

Case No. 2:19-CV-940 HCN

Howard C. Nielson, Jr.
United States District Judge

On December 18, 2019, Plaintiff was ordered to file within thirty days an initial partial filing fee (IPFF) of \$4.84 as well as his consent for collection of the remaining fee in increments from his inmate account. *See* Dkt. No. 10. After not hearing from Plaintiff for nearly five months and concluding Plaintiff had been unresponsive in this litigation (specifically, by not filing the IPFF and consent) the court dismissed this case on May 4, 2020. *See* Dkt. No. 11.

Three months later, on August 5, 2020, Plaintiff moved for relief from judgment under Fed. R. Civ. P. 60(b)(1), and provided a supporting affidavit. *See* Dkt Nos. 13–14. He asserts “his intention” to pay the filing fee and “difficulties in providing this payment . . . due to delays and confusion in correspondence between the petitioner and the Inmate Accounting office at Utah State Prison.” Dkt. No. 13 at 1. His affidavit further suggests confusion between him and the accounting office and health issues that have plagued his efforts to file his IPFF and consent. *See* Dkt. No. 14.

Federal Rule of Civil Procedure 60(b)(1) states: “On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . mistake, inadvertence, surprise, or excusable neglect” Fed. R. Civ. P. 60(b)(1).

On the basis of excusable neglect, **IT IS ORDERED** that:

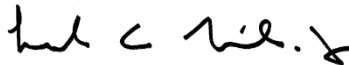
- (1) Plaintiff’s post-judgment motion is **GRANTED**. *See* Dkt. No. 13.
- (2) The dismissal order and judgment are **VACATED**. *See* Dkt. Nos. 11–12.
- (3) Plaintiff has a **FINAL** thirty days in which to file the ordered IPFF and consent to collection of fees. A copy of the consent to collection of fees is attached, should Plaintiff need it. If Plaintiff does not comply, this action will be dismissed again without further notice.

* * *

IT IS SO ORDERED.

DATED this 2nd day of March, 2021.

BY THE COURT:



Howard C. Nielson, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Elrachio Naguan Craig (Case No. 2:19-CV-940-HCN), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Elrachio Naguan Craig, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$4.84, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 351 S. West Temple, Rm. 1.100, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

Signature of Inmate
Elrachio Naguan Craig